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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FELICITA MELENDEZ,	:
	:
Plaintiff,	:
	:
vs.	:
	:
GERARDO RODRIGUEZ, VOLPE DEDICATED,	:
INC., and RITE AID HEADQUARTERS CORP,	:
	:
Defendants.	:
	:
-----X	

CIVIL NO.: 12-CV-8846 (PKC)

**PLAINTIFF’S SECOND MOTION IN LIMINE TO PRECLUDE OR SUBSTANTIALLY
LIMIT TESTIMONY OF KEVIN GALBREATH AND USE OF RELATED EXHIBITS**

Plaintiff, FELICITA MELENDEZ, pursuant to Federal Rules of Civil Procedure 26 and 37, and Federal Rules of Evidence Rules 104, 401, 402, 403, 611, 702, and 703, moves the Court for an Order:

- (1) Precluding the testimony of defendants GERARDO RODRIGUEZ and VOLPE DEDICATED, INC.’s (hereinafter collectively the “Volpe Defendants”) proffered expert witness in matters of transportation safety, Kevin Galbreath; and
- (2) Precluding the use of three computer-generated animations created by Robert Miller, the Volpe Defendants’ proffered accident reconstruction expert, as demonstrative exhibits or evidence.

This motion is made on the grounds that the Volpe Defendants, through their counsel, served a last-minute notice of expert exchange identifying Galbreath as a witness they may call at the trial of this action, which expanded the scope of Galbreath’s testimony to include computer

animations created by the Volpe Defendants' accident reconstruction expert, Robert Miller. The exchange, in addition to being made at the last minute, was deficient in two critical respects. Since the expert discovery period closed less than seven hours after the Volpe Defendants made their deficient exchange, plaintiff is now faced with the prospect of having an expert witness testify as to opinions whose basis is undisclosed to the plaintiff, and which plaintiff has had no opportunity to explore through deposition. Furthermore, the animations themselves are inadmissible in evidence or as demonstrative exhibits. All of the foregoing is more fully addressed in the Declaration and Memorandum of Law submitted in support of Plaintiff's motion.

Dated: September 21, 2013

Sincerely,

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